

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Butler Broadcast Consultants, LLC)	File No. EB-FIELDSCR-14-00017579
Licensee of Station WXKW)	
)	
Facility ID: 170942)	NOV No. V201532600001
)	
Key West, Florida)	

NOTICE OF VIOLATION

Released: December 8, 2014

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission’s rules (Rules),¹ to Butler Broadcast Consultants, LLC (Butler), licensee of Station WXKW in Key West, Florida. Pursuant to Section 1.89(a) of the Rules, issuance of this NOV does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation(s) noted herein.²

2. On November 11, 2014, Butler responded to an inquiry from the Miami Office regarding potential violations at Station WXKW. Based on the response, the agent noted the following violation:

47 C.F.R. § 11.35(a): “EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in §11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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received and these records must be retained for two years, maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.” According to Butler’s response, Station WKKW’s EAS equipment was out of service from the end of May or beginning of June, 2014 until October 29, 2014. Butler admitted that it did not log the exact date that its EAS equipment was taken out of service, did not log its failure to receive EAS tests while its EAS equipment was out of service, and did not notify the FCC when its equipment had been out of service for more than 60 days. Butler also stated that it did not have any printed or digital copies of logs of EAS tests prior to May 2014, so it had no evidence that its EAS had been operational prior to May 2014.

3. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees. We also must investigate violations of other rules that apply to broadcast licensees.

4. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,³ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Butler must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response must contain a statement of the specific action(s) taken to preclude recurrence of the violations. The response must also include printed logs, generated by Station WKKW’s EAS equipment, of all EAS tests and activations from October 29, 2014 until the date the response is sent and any logs of prior tests in 2014 recovered from the damaged EAS unit. The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁴

5. In accordance with Section 1.16 of the Rules, we direct Butler to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Butler with personal knowledge of the representations provided in Butler’s response, verifying the truth and accuracy of the information therein,⁵ and confirming that all of the information requested by this Notice which is in the licensee’s possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁶

³ 47 U.S.C. § 308(b).

⁴ 47 C.F.R. § 1.89(c).

⁵ Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁶ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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6. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission
Miami Office
PO Box 520617
Miami, FL 33152-0617

7. This Notice shall be sent to Butler at its address of record.

8. The Privacy Act of 1974⁷ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

Steven DeSena
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

⁷ P.L. 93-579, 5 U.S.C. § 552a(e)(3).